IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 296 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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M/S. POOJA ROADWAYS, PROP. THRO' ITS PROP.BACHUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 296 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR KC SHAH APP for Respondent No. 1

MR ASHUTOSH R BHATT for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. In this petition which is filed under Article 226/227 of the Constitution of India, petitioner who claims to be the owner of 12,000 Lits. of diesel which

was transported in the tanker bearing registration No.GQB 4283 belonging to the petitioner and seized by the concerned authority and the interim custody of which was handed over to respondent No.2 herein, Suresh @ Lalbhai Abhayji Patel, has prayed to quash and set aside the order dated 4.2.2002 passed by the learned Judicial Magistrate, First Class (4th court), Vadodara below Application No.2 of 2002 arising out of CR No.I-185 of 2001 registered with Chhani Police Station which is confirmed in revision vide order dated 16.4.2002 recorded in Criminal Revision Application No.36 of 2002 by the learned Additional Sessions Judge, Vadodara.

2. Mr. A.B. Bhatt, learned advocate for respondent No.2 states that in pursuance of the order dated 4.2.2002 passed by he learned Judicial Magistrate, First Class (4th court), Vadodara, respondent No.2 has deposited Rs.2,30,000/- as cash amount in the court of the learned JMFC (4th Court), Vadodara in compliance of the condition No.2 contained in the terms and conditions of the order dated 4.2.2002 and after depositing the said amount respondent No.2 has disposed of the said stock of diesel. He therefore urged that since the order passed by the learned JMFC which is confirmed by the Revisional court has already been implemented, more particularly petitioner's interest is also safeguarded as respondent No.2 has deposited the amount of Rs.2,30,000/towards the price of muddamal diesel as at the conclusion of the trial, the learned JMFC will decide to whom the said amount is to be paid, this petition has now become infructuous.

3. Having heard the learned advocates appearing for the parties and in the facts and circumstances emerging from the record of the case and more particularly the fact that the order recorded on 4.2.2002 by the learned JMFC is confirmed by the Revisional court by which respondent No.2 was granted interim custody of the muddamal diesel on condition that respondent No.2 shall deposit Rs.2,30,000/- in the court of JMFC Vadodara which has been complied with, I am of the opinion that interest of the petitioner is also well safeguarded by the learned Magistrate. Therefore, Mr. Bhatt, learned advocate for respondent No.2 states that respondent No.2 has no objection if the said amount is paid to the petitioner.

4. In view of the aforesaid state of affairs, it would be open for the petitioner to apply before the learned JMFC Vadodara for getting the said amount which is deposited by respondent No.2 in the court. Upon such application being filed the learned Magistrate shall

decide the said application in accordance with law bearing in mind the above statement made by Mr. Bhatt, learned advocate for respondent No.2.

5. In view of the aforesaid observation and direction, Mr. Prajapati, learned advocate for the petitioner does not press this petition at this stage. The petition, therefore, stands disposed of as it is not pressed. Rule is discharged. Interim relief, if any, stands vacated.

(A.M. Kapadia, J.)

(karan)